

Amendment No. 1 to SB3312

McLeary
Signature of Sponsor

AMEND Senate Bill No. 3312

House Bill No. 3401*

FILED

Date _____

Time _____

Clerk _____

Comm. Amdt. _____

by deleting all language after the enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Section 50-6-241, is amended by deleting the section in its entirety and by substituting instead the following:

Section 50-6-241.

(a)

(1)

(A) For injuries arising on or after August 1, 1992 through June 30, 2004, in cases where an injured employee is eligible to receive any permanent partial disability benefits, pursuant to § 50-6-207(3)(A)(i) and (F), and the pre-injury employer returns the employee to employment at a wage equal to or greater than the wage the employee was receiving at the time of injury, the maximum permanent partial disability award that the employee may receive is two and one-half (2 1/2) times the medical impairment rating determined pursuant to the provisions of the American Medical Association Guides to the Evaluation of Permanent Impairment (American Medical Association), the Manual for Orthopedic Surgeons in Evaluating Permanent Physical Impairment (American Academy of Orthopedic Surgeons), or in cases not covered by either of these, an impairment rating by any appropriate method used and accepted by the medical community. In making determinations, the court shall consider all pertinent factors, including lay and expert testimony, employee's age, education, skills and training, local job opportunities, and capacity to work at types of employment available in claimant's disabled condition.

(B) For injuries arising on and after July 1, 2004, in cases where an injured employee is eligible to receive any permanent partial disability benefits, pursuant to § 50-6-207(3)(A)(i) and (F), and the pre-injury employer returns the employee to employment at a wage equal to or greater than the wage the employee was receiving at the time of injury, the maximum permanent partial disability award that the employee may receive is the medical impairment rating determined by the treating physician pursuant to the provisions of the American Medical Association Guides to the Evaluation of Permanent Impairment (American Medical Association), the Manual for Orthopedic Surgeons in Evaluating Permanent Physical Impairment (American Academy of Orthopedic Surgeons), or in cases not covered by either of these, an impairment rating by any appropriate method used and accepted by the medical community. In making determinations, the court shall consider all pertinent factors, including lay and expert testimony, employee's age, education, skills and training, local job opportunities, and capacity to work at types of employment available in claimant's disabled condition.

(2) In accordance with this section, the courts may reconsider, upon the filing of a new cause of action, the issue of industrial disability. Such reconsideration shall examine all pertinent factors, including lay and expert testimony, employee's age, education, skills and training, local job opportunities, and capacity to work at types of employment available in claimant's disabled condition. Such reconsideration may be made in appropriate cases where the employee is no longer employed by the pre-injury employer and makes application to the appropriate court within one (1) year of the employee's loss of employment, if such loss of employment is within four hundred (400) weeks of the day the employee returned to work. In enlarging a previous award, the court must give the employer credit for prior benefits paid to the employee in

permanent partial disability benefits, and any new award remains subject to the maximum established in subsection (b).

(b)

(1) Subject to factors provided in subsection (a) of this section, in cases for injuries on or after August 1, 1992 through June 30, 2004, where an injured employee is eligible to receive permanent partial disability benefits, pursuant to § 50-6-207(3)(A)(i) and (F), and the pre-injury employer does not return the employee to employment at a wage equal to or greater than the wage the employee was receiving at the time of injury, the maximum permanent partial disability award that the employee may receive is six (6) times the medical impairment rating determined pursuant to the provisions of the American Medical Association Guides to the Evaluation of Permanent Impairment (American Medical Association), the Manual for Orthopedic Surgeons in Evaluating Permanent Physical Impairment (American Academy of Orthopedic Surgeons), or in cases not covered by either of these, an impairment rating by any appropriate method used and accepted by the medical community. In making such determinations, the court shall consider all pertinent factors, including lay and expert testimony, employee's age, education, skills and training, local job opportunities, and capacity to work at types of employment available in claimant's disabled condition.

(2) For injuries arising on and after July 1, 2004, subject to factors provided in subsection (a) of this section, where an injured employee is eligible to receive permanent partial disability benefits, pursuant to § 50-6-207(3)(A)(i) and (F), and the pre-injury employer does not return the employee to employment at a wage equal to or greater than the wage the employee was receiving at the time of injury, the maximum permanent partial disability award that the employee may receive is not limited by subsection (a) and the award may not exceed the maximum award otherwise available pursuant to this chapter. In making such

determinations, the court shall consider all pertinent factors, including lay and expert testimony, employee's age, education, skills and training, local job opportunities, and capacity to work at types of employment available in claimant's disabled condition.

SECTION 2. Tennessee Code Annotated, Section 50-6-242, is amended by deleting the language "Notwithstanding" at the beginning of the section and by substituting instead the language "For injuries arising on or before June 30, 2004, notwithstanding".

SECTION 3. Tennessee Code Annotated, Section 50-6-405, is amended by adding the following as a new subsection:

(j) The commissioner of commerce and insurance may request any information or data the commissioner reasonably deems to be necessary in determining that a self-insuring employer or pool authorized under this part is financially and actuarially sound for the purposes of meeting obligations imposed under this chapter. The commissioner may request, but not be limited to requesting, financial statements, audits and any information that the commissioner may request of an insurer under title 56. The commissioner may use any power and any sanction or remedy available under title 56 for use with respect to an insurer in order to obtain such information from such self-insured employer or pool.

SECTION 4. Tennessee Code Annotated, Section 50-6-205(b)(3), is amended by deleting the subdivision in its entirety and by substituting instead the following:

(3) The commissioner shall assess a civil penalty, which shall be paid to the employee, on any employer or such employer's insurance carrier who fails to pay compensation as herein provided on any unpaid installments of:

(A) fifteen percent (15%) on payments that are paid between fifteen (15) days and twenty (20) days after the payment is due as provided in subdivision (b)(2);

(B) twenty percent (20%) on payments that are paid between twenty-one (21) days and thirty (30) days after the payment is due as provided in subdivision (b)(2); and

(C) thirty percent (30%) on payments that are paid more than thirty (30) days after the payment is due as provided in subdivision (b)(2).

SECTION 5. Tennessee Code Annotated, Section 50-6-236, is amended by adding the following as a new subsection:

(m) A workers' compensation specialist is authorized to schedule mandatory meetings of the parties for a benefit review conference. A specialist is also authorized to hold such mandatory benefit review conferences, and as authorized by this chapter to order initiation of temporary disability and medical benefits under this chapter and to settle cases.

SECTION 6. Tennessee Code Annotated, Section 50-6-239, is amended by deleting the section in its entirety and by substituting instead the following:

(a) On receipt of a request from a party or on its own motion, the court shall direct the parties to a disputed workers' compensation claim to meet in a benefit review conference to attempt to reach agreement on disputed issues involved in the claim.

(b) Immediately following a benefit review conference, either party may move the court to set the case for final adjudication on an expedited basis.

(c)

(1) At the time of a request for a benefit review conference or a court mandated conference, the division of workers' compensation shall notify the parties in writing of the length of time required to make available a specialist to conduct a conference. If the time period is thirty (30) days or less, then the conference is mandatory for the parties. Notwithstanding any other provision of law or local court rule to the contrary, if the time period exceeds thirty (30) days, then the conference is optional for that case and the division shall inform the parties in writing that the conference is not required. The parties shall cooperate

in scheduling a conference. The commissioner is authorized to promulgate rules concerning scheduling pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5. A violation of such rules is a basis for a specialist to declare an impasse and conclude a conference.

(2) A benefit review conference program is mandatory for all cases under this chapter and a court may not enter a judgement or an agreed order without a report from a workers' compensation specialist pursuant to § 50-6-240, unless the parties have agreed to a settlement apart from a benefit review conference and have submitted a settlement for approval under the provisions of this chapter.

(3) In all cases where the parties have any issues in dispute, the parties shall request the department to hold a benefit review conference.

SECTION 7. Tennessee Code Annotated, Section 50-6-225(a)(1), is amended by inserting the following language immediately after the first sentence of the subdivision:

Notwithstanding any other provision of this chapter, a judgement or an agreed order may not be filed for an action under this section without the filing of a report or settlement pursuant to Section 50-6-240, unless a benefit review conference is optional or otherwise excused pursuant to Section 50-6-239.

SECTION 8. The advisory council on workers' compensation shall study the issues relating to medical costs in workers' compensation cases and bring a recommendation concerning a medical fee schedule to the general assembly on or before January 15, 2005.

SECTION 9. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 10. This act shall take effect July 1, 2004, the public welfare requiring it.